IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 389 of 2005
Date of decision 3 .8 .2007

The Commissioner of Income Tax .. Appellant

Versus

Shri Rohtas .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Yogesh Putney, Advocate for appellant
Mr. Rakesh Gupta, Advocate for the respondent

M.M.Kumar, J.

The Revenue has approached this Court by invoking the appellate jurisdiction under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') and has challenged order dated 29.9.2004 passed by the Income Tax Appellate Tribunal, New Delhi Bench A, Delhi passed in ITA No.200/Del/04 for the assessment year 1996-97. The Revenue has claimed that the following substantial question of law would arise:

> " Whether the Hon'ble ITAT was rightly in law in holding that the assessment framed in the status of HUF by the Assessing Officer as null and void, though the assessee himself admitted during the assessment proceedings that the land sold by him on which consideration was received and was declared in the return of income as Capital Gain, belonged to HUF ?"

Facts in brief may first be noticed. The assessee had sold agricultural land in the year relevant to the assessment year 1996-97. The assessee did not file the return. The income from the sale of land was assessable to tax for the assessment year 1996-97 under the head Capital Gain. Accordingly, notice under Section 148 of the Act was issued to the assessee on 12.1.2004.

He filed his return in the status of 'individual' declaring his net income of Rs.8,50,981/-. The assessee in the computation of income enclosed with the return, declared the gross Capital Gain at Rs. 84,13,988/- and after claiming deduction u/s 54 B and 54F of the Act at Rs. 61,96,375/- and Rs.15,03,000/- respectively, net capital gain was worked out at Rs. 7,14,613/-. The assessment under Section 143(3) of the Act was completed by the Assessing Officer on 14.3.2002 by treating the status of the assessee to be HUF and the net income from the long term capital gain was assessed at Rs. 69,10,988/-. Accordingly, the Assessing Officer, while assessing the income under the head Capital Gain did not allow the deduction under Section 54 B of the Act which could have amounted to Rs. 61,96,375/- as per the claim made by the assessee. However,, the deduction was not allowable to the assessee in the status of HUF. The assessee felt aggrieved with the assessment order and challenged the same before the Commissioner of Income Tax (Appeals) (for brevity ' the CIT(A)'). The appeal was dismissed by the CIT(A) holding that the Assessing Officer was justified in treating the status of the assessee as 'HUF' as against 'individual'.

On further appeal to the Income Tax Appellate Tribunal, it was held that the assessment framed by the Assessing Officer was null and void because notice dated 12.1.2004 issued to the assessee under Section 148 of the Act was without intimating his status to be HUF. The operative part of the order passed by the Tribunal reads as under:

> " Having considered the rival submissions and from a careful perusal of the record and judgements referred to by the parties, we find that admittedly the notice under Section 148 and other notices under Section 143(2) and 142(1) of the Income Tax

> Act, 1961 were issued upon the assessee in the status of an individual. During the course of hearing, the learned counsel for the assessee has also invited our attention to the reasons recorded and from its perusal it appears that the reasons were also recorded in the case of assessee- Individual. In response to notice under Section 148 return was also filed in the status of an individual. We have also carefully examined the impugned letter dated 14.3.2002 on which the Revenue has placed heavy reliance and we find through this letter the assessee has categorically stated that the land was acquired through a court decree, therefore, the status is shown as Individual."

We have heard learned counsel for the parties and find that firm findings of fact have been recorded by the Tribunal holding that the assessee did not make any statement about the status of HUF in the letter dated 14.3.2002 on which the Assessing Officer had placed heavy reliance. It has further been found that notice under Section 148 and other notice under Sections 143(2) and 142(1) of the Act were issued upon the assessee by presuming his status as 'individual'. The Tribunal has also referred to the reasons recorded for issuance of notice which led to the conclusion that the notices were issued by treating the assessee as' individual'. The return under Section 148 of the Act was also filed in the status of 'individual'. In the teeth of the afore-mentioned finding necessary legal consequences are bound to follow namely that once a notice under Section 148 and other sections were issued by treating the assessee as individual then the Assessing Officer could not have framed the assessment by treating the income in the hands of HUF. We are fortified in our view by the judgement of Hon'ble the

Supreme Court in the case of CIT v. K.Adinarayana Murthi (1967) 65 ITR 607 Therefore, we do not find that any question of law much less a substantial question of law would arise for our determination.

For the reasons afore-mentioned this appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

3 .8.2007
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